Supreme Court, U.S.
FILED
SEP 30 1970
EAVER, CLERK

IN THE

Supreme Court of the United States

October Term, 1970

No. 623

TEXACO, INC.,

Petitioner,

v.

EDWARD L. BEALMER and PAT BROWN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

MILTON HANDLER,
425 Park Avenue,
New York, New York 10022.

Of Counsel:

J. M. MITCHELL,
135 East 42nd Street,
New York, New York 10017.

WILLIAM D. EVANS,
3350 Wilshire Boulevard,
Los Angeles, California 90005.

KAYE, SCHOLER, FIERMAN,
HAYS & HANDLER,
425 Park Avenue,
New York, New York 10022.

IN THE

Supreme Court of the United States

October Term, 1970

No. 623

TEXACO, INC.,

Petitioner,

v.

EDWARD L. BEALMER and PAT BROWN,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

Respondents' Opposing Brief offers as its first argument for denying the writ the factual claim that respondents chose to proceed individually prior to the time the union and Texaco reached agreement (Opposing Br. 5). Indeed, respondents find it necessary to go so far as to label the contrary assertion "a flat misstatement of fact" (id. at 2).

The short answer is that the District Court expressly found that the union and Texaco agreed to the settlement formula for all of the employees involved on March 15, 1968 (Petition, Appendix B, p. 8a, Finding 14) and it was concededly not until April 3, 1968 that either respondent sought to repudiate his earlier designation of the union and to make an "election" to proceed "individually" (Op-

posing Br. 3). The decision of the Court of Appeals in no wise challenged the District Court's factual finding and its opinion is plainly predicated on the view that District Courts are precluded from denying arbitration even in the face of a prior settlement of the dispute.* The very fact that respondents have found it necessary to contradict the unchallenged District Court finding implicitly acknowledges the indefensibility of maintaining that an employee should be able to elect to have his union represent him in a multi-employee grievance negotiation and then be free to start his own proceeding if he is later dissatisfid with the terms of the collectively bargained resolution of the matter.

Respondents predicate their only other argument for denying the writ upon the provisions of Article XIV of the collective bargaining agreement, which they set forth in an appendix to their brief. Respondents characterize the provisions of this Article as "critical" (Opposing Br. 2). Once again, respondents' effort to uphold the decision of the Court of Appeals merely serves to underscore the fact that it is insupportable. The so-called "critical" provision is nowhere quoted, paraphrased or summarized in the opinion of that Court. The Court of Appeals nowhere indicated that it viewed Article XIV as a basis for distinguishing the *Black-Clawson* case or as a predicate for its decision. While Article XIV gave respondents the option of proceeding on their own or having the Union represent them, the Court of Appeals evidently recognized that since they elected to be represented by their union until after an agreement had been reached, the fact that respondents

---

* When respondents sought, after the March 15th agreement between the union and Texaco, to repudiate their election of the union to represent them, Texaco temporarily delayed implementation of the agreement pending consideration of respondents' claims. To make it emphatically clear that it would not accept any such delay in Texaco's implementation, the Union brought the action referred to by respondents (Opposing Br. 2) and Texaco thereupon honored the agreement.

earlier could have proceeded differently than they did was of no moment. But the fact remains that respondents did opt for the union, and since all parties acted on this understanding in collective bargaining, respondents must be required to abide by their choice. Otherwise, labor-management relations would become chaotic.

In sum, it is respectfully submitted that the Opposing Brief in no way alters the vital importance of granting the writ, as described in the Petition, and furnishes no valid basis for denying it.

Respectfully submitted,

MILTON HANDLER
425 Park Avenue
New York, New York 10022

Of Counsel:

J. M. MITCHELL
135 East 42nd Street
New York, New York 10017

WILLIAM D. EVANS
3350 Wilshire Boulevard
Los Angeles, California 90005

KAYE, SCHOLER, FIERMAN, HAYS & HANDLER
425 Park Avenue
New York, New York 10022